IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION
FIRST APPEAL NO.777 OF 1989

The State of Maharashtra .. Appellant
(Original Opponent)

Versus

Shri Shripat Joma Govari .. Respondent
(Original Claimant)

Mr. Bharat Mehta AGP for the Appellant
None for Respondent

CORAM : S.R.SATHE,J.
DATED : 10/08/2007

ORAL JUDGEMENT:-

1. The State of Maharashtra has preferred this appeal against the judgement and order passed by the Civil Judge Senior Division, Alibag-Raigad in Land Acquisition Reference No.189 of 1987 whereby the amount of compensation awarded by the Special Land Acquisition Officer (hereafter referred to as S.L.A.O.) was increased from Rs.3/- per sq.meter to Rs.15/- per sq.meter in respect of the claimant's land bearing S.Nos. 180/1 and 180/7 admeasuring 1.5R and 3R respectively, situated at village Kamothe, Taluka Panvel.

2. The brief facts giving rise to this appeal are as under :-

SLAO Metro Centre No.XII, Panvel District Raigad acquired land under reference for New Bombay

project and notification under section 4 of the Land Acquisition Act (hereafter referred to as “the said Act”) came to be issued on 03/02/1970. The necessary publication in the gazate was made on 04/02/1970. The S.L.A.O. after taking into consideration all the relevant factors for the determination of the fair market price awarded compensation at the rate of Rs.3/- per sq.meter. The claimant Shri Shripat Joma Govari accepted the said amount under protest. The date of award was 28/08/1986 and possession was taken on 18/09/1986.

3. The claimant filed reference No.189 of 1987 under section 18 of the said Act and made a grievance that awarded price was unreasonable and grossly inadequate. According to him, the land under reference is situated near Panvel Town at some distance from Bombay-Pune National Highway. Petrol Pumps are also situated near from the said land. Gavthan of village Kamothe is near from the land under reference and it is adjacent to Jawahar Industrial Estate. According to claimant, infrastructural facilities such as water, electricity etc. were available to the land in question and it had NA potentiality for industrial, commercial and residential purposes. The claimant, therefore,

claimed compensation at the rate of Rs.25/- per square meter for the land under reference.

4. The opponent SLAO filed Written Statement at Exh-6 and resisted the claim. It is contended by the opponent that the land in question is not a NA land. It has no approach road. So, considering the level and situation of the land compensation awarded was not only reasonable but adequate. It was also contended that the compensation has been determined after taking into consideration the sale instances of the relevant period in respect of the lands situated in the locality of the land under reference. The S.L.A.O., therefore contended that reference be dismissed.

5. On these pleadings the learned Civil Judge Senior Division, Raigad-Alibag framed issues at Exh-7. In order to prove his case the claimant examined himself at Exh-20 and land valuer J.N. Kulkarni at Exh-21. He also produces valuation report of the land valuer. As against this, the opponent S.L.A.O. did not adduce any oral evidence.

6. After considering the evidence adduced by the claimant and the relevant factors, the learned Civil

Judge Senior Division found that lands in question are situated adjacent to the extended municipal limits of Panvel. Having regard to the market price determined by the High Court in respect of the lands in that locality, the learned Civil Judge Senior Division came to the conclusion that the amount of compensation determined by S.L.A.O. was grossly inadequate. On the basis of the price determined in other cases arising out of the same locality and considering the other relevant factors, the learned Civil Judge Senior Division fixed the market price at Rs.15/- per sq.meter and awarded the compensation accordingly with additional component under the said Act as per Section 23 (1)(A), 23(2) and Section-28 of the said Act.

7. Being aggrieved by the above mentioned order the State of Maharashtra has preferred the present appeal. In this appeal before me Shri Bharat Mehta, learned AGP submitted that the land in question is far away from Bombay-Pune National Highway and is at low level. It is paddy land. No approach road is available to the land in question. The road for the land under reference is from the bund and so, the compensation granted by the learned Civil Judge Senior Division is unreasonable. Ofcourse, at the same time, he fairly

submitted that the Division Bench of this Court (CORAM: F.I.REBELLO AND S.R. SATHE,JJ.) has granted compensation in respect of different groups of lands situated within Panvel Municipal area and around and in the said cases the High Court has fixed market price after taking into consideration the distance of the lands from National Highway. He, therefore, submitted that price determined by the Court in the said proceedings can be considered while deciding this appeal. So far as the Respondent-original claimant is concerned none appeared on his behalf though, the Court notice was served on the claimant.

8. While considering the question as to whether the compensation awarded is correct or not and what should be the correct compensation one has to take into consideration provisions of Section-23 and 24 of the said Act which lay down factors to be considered in determining compensation and factors which are required to be neglected in determining compensation, respectively. The most crucial question that always falls for consideration in such case is what is the market value of the acquired land. It must be determined by reference to the price which a willing seller might reasonably accept from a willing

purchaser. It is also well settled that such consideration must be confined to the date of notification under section 4(1) of the said Act. In a case reported in **AIR 1980 SUPREME COURT 1870 Adusumilli Gopalkrishna V/s. Special Deputy Collector (Land Acquisition)**. The Apex Court has observed :-

> *" On the Assessment of the compensation payable for land acquired, relevant factors must be taken into consideration, including nature of the land, its present use and its precise location in relation to adjoining land, the use to which the neighbouring land has been put and the impact of such use on the acquired lands and so on."*

9. It is also well settled that the recognized method for determining the correct market value is to find out comparable instances of sale. Even while doing so only genuine instances have to be taken into account. Besides this, it is necessary to see and consider the said instances of sale keeping in mind the proximity of time, proximity of situation and plus minus factors of the comparable instances of sale and the plus-minus factors of the land in question.

10. Keeping in mind the above principles, let's examined the facts, circumstances and the evidence of the case in hand. It is not in dispute that the land under reference is situated at village Kamothe and it is acquired for New Bombay project. In order to point out the peculiarities of the land in question the claimant is mainly relying on his own deposition as well as evidence of the land valuer J.N. Kulkarni. The valuer has filed his report with map. From the evidence adduced on behalf of the claimant, it is very clear that land under reference is adjacent to the extended municipal limits of Panvel. It appears that the land is near from Bombay-Pune National Highway. It is at a distance of 2240 meters from Highway. Sion-Panvel Highway is at a distance of 960 meters from the land in question. MIDC Industrial Estate Taloja is 700 meters. Admittedly, Jawahar Industrial Estate is very close to the land in question and Panvel S.T. Stand and Panvel Railway Station are also not far away. Thus, the above mentioned topography indicates that lands are in the vicinity of all important places and industrial establishment. Ofcourse, it does appear that there is no regular approach road to the land in question and as it is the land is not NA. However, at the same time, water facility and electricity facility are available

to the abutting Jawahar Industrial Estate. So, one thing is certain that the land in question has NA potentiality for commercial, industrial and residential purposes. From the evidence on record it appears that the level of the land is below 6 inches from the road. However, the valuer had stated that the land under reference is plain and well drained and the cost of development is negligible and there is no water logging in any part of the land. It is equally true that the land in question was inspected by the valuer in 1987 and as such he was not knowing what was the condition of the land in 1970 when the notification under section 4 of the said Act was issued. However, so far as the factors regarding topography and the point with regard to potentiality of the land is not in dispute.

11. From the evidence of the valuer it is also clear that the valuer has taken into consideration the sale instances of ESSO petrol Pump. It is situated at a short distance from the land under reference. The said transaction has taken place in the year 1967 and the rate of the said land was Rs.14.65/- per sq.meter. It is not in dispute that the above mentioned transaction of ESSO Petrol pump has been accepted by the Court in other land references as base for determination of

market value of the lands in that locality. Of course, the said petrol pump is not situated in the village Kamothe but it is situated at village Kalamboli which is at some distance from Kamothe.

12. Thus, we find that while determining the market price the valuer has taken into consideration all necessary aspects and the learned Trial Judge has also considered the same.

13. It is an admitted fact that this Court in several appeals arising out of land references in respect of the lands situated at Panvel and Kamothe determined the market price of the lands in that locality. In FA-754-86, Division Bench of this Court (CORAM : PURANIK AND MOHARIR, JJ.) on 25/02/1993 determined the market value of the land situated within municipal limits of Panvel and Kamothe. After considering the vicinity of respective lands to the National Highway No.4 and other infrastructural facilities available, the said court awarded compensation by fixing the market price within the range of Rs.18/- to Rs.20/- per sq.meter. It must be noted that the above mentioned judgement is maintained by the Apex Court. It indicates that the Apex Court did

not find it necessary to interfere with the market value fixed by the Court in the said case. However, it appears that the point with regard to 10% deduction for development was not considered at that time. Still, the above mentioned Division Bench Judgement has to be considered as a guideline while determining the price of the land in question.

14. The Division Bench of this Court (CORAM : F.I.REBELLO AND S.R.SATHE,JJ.) in FA-757-2003 and other companion appeals, fixed the market price for each group of land taking into consideration the distance between land under reference and Bombay-Pune highway. As per the said judgement for the lands situated within 750 meters from the said Highway, the market value is fixed at Rs.25/- per sq.meter after considering 10% deduction. For the lands situated between 750 to 1500 meters from the highway the market price after deduction was fixed at Rs.23/- per sq.meter and for the lands situated at a distance of above 1500 meters from the national highway, after deduction of 10% the market price is fixed at Rs.21/- per sq.meter. So, the present case will fall in the third category. The land in question is near from Sion-Panvel highway. I am aware that one distinguishing factor between the land

involved in the above mentioned appeal and the present appeal is that in the above mentioned appeal, the lands were actually situated within municipal limits of Panvel while in the instant case the land in question is adjacent extended municipal limits of Panvel. So, reducing the market value for this particular disadvantage, the reasonable, fair market price for the land in question is Rs.15/-. So, the market value of the land in question was determined by the learned Civil Judge Senior Division can not be said to be exorbitant and unreasonable. Even if, the same is tested on the basis of the above mentioned two Division Bench Judgements, the same appears to be correct.

15. In this view of the matter, there is no substance in this appeal.

Hence, I pass following order :-

O R D E R

The appeal is dismissed.

Under the circumstances of the case parties to bear their own costs of this appeal.

(S.R. SATHE,J.)